IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5575 OF 2005

Smt. Shudha w/of Naresh Gaikwad ...Applicant
Vs.
Mr.Kamruddin Mustafa Khan & Anr. ...Respondents

Shri G.V. Bhagat i/by W.I.Shaikh for the Applicant.
Shri M. Amin H.Solkar for the Respondent No.1.
Shri K.V. Saste, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 18, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant, the Advocate appearing for the Respondent No.1 and the learned A.P.P. for the State. The learned Advocate appearing for the Applicant in support of the prayer for cancellation of bail, invited my attention to the order dated 22nd September, 2003 of this Court by which the learned Single Judge of this Court rejected the Application made by the Applicant. He submitted that thereafter the Respondent No.1 filed a fresh Application before the Sessions Court which has been allowed by the order dated 26th July, 2005. He submitted that the bail has been granted by the Additional Sessions Judge on the grounds which are already rejected by this Court. He therefore, submitted that considering the strong prima facie material on record to implicate the Applicant, bail deserves to be granted. He submitted that the

learned 3rd Adhoc Additional Sessions Judge, Kalyan has committed judicial impropriety by granting the bail on the grounds which are already rejected by this Court.

2. I have considered the submissions. Prima facie, the submission made by the learned Advocate for the Applicant only on the basis of order dated 22nd September, 2003 carries some substance. However, there is a subsequent order passed by this Court on 23rd December, 2004. It appears that after rejection of the first Application made by the Respondent No.1 by this Court, by an order dated 22nd September, 2004, second Bail Application filed by the Respondent No.1 was rejected of by the same learned Judge by making following observation:

> "2. Applicant is granted liberty to prefer fresh application for bail before the trial court. The trial Court shall decide the said application without being influenced by any observation made by this Court in the order dated 22.09.2003."

3. In view of the aforesaid clarification made by

this Court, it appears that the learned Additional Sessions Judge considered fresh Bail Application made by the Respondent No.1 independently. The learned Judge had noted that the main accused who was allegedly the brain behind the conspiracy has been released on bail.

4. It is well settled position of law that the order granting bail cannot be cancelled as a matter of course as it affects liberty of an individual. As of today, there is no allegation that the Respondent No.1 has misused the liberty granted by the order of bail. Thus, on the basis of the averments made in this Application, as of today, there is no ground for cancellation of bail and accordingly, Application is rejected.

JUDGE